

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. See 86 Ill. Adm. Code 130.2005(b)(4). (This is a PLR).

August 13, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of June 28, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/Laws/regs/part1200/>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

AAA hereby requests a Private Letter Ruling to exempt from ROT dining facility sales to resident students, nonresident students, and employees of AAA that participate in the SCHOOL's declining-balance meal plan program.

STATEMENT OF MATERIAL FACTS:

AAA offers undergraduate and graduate level courses of instruction to a student body that consists of resident students living in dormitory and apartment facilities and commuter students that do not reside on-campus. AAA is a large campus and has numerous cafeteria food service operations in facilities owned by the SCHOOL. All are located on school premises.

Dining facilities at AAA are not 'closed facilities' (i.e., limited to students only) due to the impracticality and expense of building and operating food venues restricted to students only. Existing cafeterias serve the faculty, staff, students, and also those members of the general public who might be on campus for cultural events, conferences, continuing education courses, or for other reasons.

AAA issues a photographic identification card to each student and staff member. These cards are used for building access and permit authorized individuals to utilize a variety of SCHOOL services. The identification cards have encoding capability that permits operation and maintenance of a declining-balance meal plan program that provides auditable and verifiable records of food sales to program participants that are eligible for

exemption from Retailers' Occupation Tax pursuant to Title 86 Part 130 Section 130.2005.

We believe the rationale expressed by the Illinois Department of Revenue (Department) in your Private Letter Ruling dated May 12, 1995 to SCHOOL2 is applicable to this request. A similar Private Letter Ruling, ST 01-0004-PLR 2/14/2001, was issued to the SCHOOL3. The campuses share IL tax exemption number issued collectively to the SCHOOL.

The requests submitted to the Department by SCHOOLS limited their scope to meals sold to individuals living in on-campus SCHOOL housing and participating in a declining-balance meal plan program. AAA presently restricts participation to resident students with such meal plans as well. We believe, however, that exemption from Retailers' Occupation Tax pursuant to Title 86 Part 130 Section 130.2005 should be permissible also for nonresident students and SCHOOL staff and are accordingly requesting a broader Private Letter Ruling acknowledging exemption from Retailers' Occupation Tax for meals sold to any AAA students enrolled in classes for academic credit and AAA staff members who purchase their meals through participation in a declining-balance card program using their SCHOOL-issued photographic identification cards. The definition of a student for the purpose of the exemption is a person who is taking a course from the school for credit (130.2005 (b) (4) (B)). The regulations do not make a distinction between resident and nonresident students so long as they meet this criteria and additionally afford the same eligibility for exemption to school employees. The cited PLRs logically accept the premise that properly structured and administered declining-balance identification card systems reasonably satisfy the primary intent of the 'closed cafeteria' provision that was intended to prevent abuse of the exemption by commingling exempt and nonexempt transaction in a manner not conducive to audit by the Department.

Students and staff members purchasing meals under this plan will be required to present their identification cards to the cashiers who will swipe the card through the cash register or a peripheral device that will verify plan participation and deduct the cost of the meal from the individuals' account balances. The requested exemption would apply only to sales of meals to students and staff members who participate in the declining-balance identification card plan. Plan participation will be restricted to individuals whose eligibility status has been verified. AAA will clearly identify and document, at the point of sale for each food venue, the nontaxable sales to each individual participant who has purchased a declining-balance meal plan. Auditable records will be maintained in sufficient form to demonstrate the eligibility of each participant and the transaction details of all exempt purchases made by each participant. Transaction detail will be available for every individual exempt purchase by date, time, and location.

OTHER INFORMATION REQUIRED BY SEC. 120.110:

There are no contracts, licenses, or agreements, or instruments relevant to this request. Brief documentation of the declining-balance card program used by AAA is attached.

There are no audits or litigation pending. This is a request to modify our practices to include nonresident students and employees effective with the beginning of our fall term in August 2002.

To the best of the knowledge and belief of the taxpayer and the taxpayer's representatives, the Department has not previously ruled on the same or a similar issue for the taxpayer and neither the taxpayer nor any representatives has previously submitted the same or a similar issue and withdrew it.

Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.205 allows for the operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confirms its selling to students and employees of the school. The Department has previously held that such facilities can, in consideration of factors such as the prohibitive cost of constructing and operating separate facilities for patrons not qualifying for exemption, differentiate between exempt and nonexempt transactions using a declining balance identification card program that provides eligibility verification and auditable records.

Taxpayer is unaware of any authority contrary to the ruling requested.

No trade secret information is involved in this request for a ruling.

The individual signing this request is the appropriate and authorized institutional representative to seek a ruling on the question presented.

DEPARTMENT'S RESPONSE

We are unable to issue the ruling that you request.

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. If the school dining facility is opened to the public, all sales that are made at such facility, including sales to students and staff, are subject to tax. See 86 Ill. Adm. Code 130.2005(b)(4).

In a college campus setting, this has meant that sales of meals in a closed dormitory cafeteria were exempt but all food sales in a student union type setting, including sales to students, were taxable. The restricted cafeteria exemption has been available to schools for many years and is authorized by 86 Ill. Adm. Code 130.2005(a)(2)(A) on the basis that the school makes the sales only to its students primarily for the purpose of the school. As Section 130.2005(a)(2)(B) points out, the selling organization would incur Retailers' Occupation Tax liability if it should engage in selling any of the same items to the public.

You are requesting that we approve the exemption of food sales to all AAA students and staff who use the declining-balance card program set out in your letter. You have cited two Department Private Letter Rulings to support your request, ST 95-0195 (05/12/1995) and ST 01-0004 (02/14/2001). Please be advised the Department applied the closed cafeteria exemption in both these letters to situations where new on-campus student housing was constructed and the school requested authorization to exempt food sales to students that would be living in that housing. In both letters the exemption was only for students who resided in on-campus SCHOOL housing and who had purchased a meal plan. The Department further advised the schools that food sales at these dining facilities to other students, faculty, staff, and members of the public were subject to tax. The exemption was not expanded to include sales to all holders of SCHOOL issued debit cards, and we

decline to expand it now. This point has been noted in Illinois case law. See Subway Restaurants v. Topinka, 322 Ill. App. 3d 376, 385-387 (Fourth Dist. 2001).

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

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